

1 Re: 05-cv-03095-RMW

2 AUG 22 2005

3 Preston Gates &amp; Ellis LLP

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6 SUPERIOR COURT FOR THE STATE OF WASHINGTON  
7 IN AND FOR THE COUNTY OF KING8  
9 MICROSOFT CORPORATION, a )  
Washington corporation, ) NO. 05-2-23561-6 SEA  
10 Plaintiff, )  
11 vs. ) **GOOGLE INC.'S JOINDER OF LEE'S**  
12 KAI-FU LEE and GOOGLE, INC., a ) **MOTION FOR EVIDENTIARY**  
Delaware corporation, ) **HEARING**  
13 Defendants. )  
14 )  
15 )  
16 )17 Defendant Google, Inc. ("Google") respectfully submits this Joinder in Defendant Kai-Fu  
18 Lee's Motion for Evidentiary Hearing and Permission to Take Oral Testimony ("Evidentiary  
19 Hearing Motion"). Google believes that the issues raised and arguments made in Dr. Lee's  
20 moving papers are important and well taken.21 Google further submits that an evidentiary hearing is important at the Preliminary  
22 Injunction stage because the four-month period between the Preliminary Injunction Hearing and  
23 trial is a very important window. Google will suffer substantial harm for the coming year (and  
24 beyond) if the TRO – or any similarly broad restriction on Dr. Lee's activities – remains in place  
25 until the January trial date. As the Court is aware, when Google hired Dr. Lee, Google intended  
that he help establish a new research and development facility in China, which would develop

1 new products to be used throughout the numerous markets that Google serves. Specifically,  
 2 Google and Dr. Lee anticipated that he would spend late 2005 overseeing Google's recruiting  
 3 efforts for that R&D center, with the bulk of the candidates to be evaluated and hired being  
 4 Chinese university students from the Class of 2006 – i.e. those who are expected to graduate at  
 5 the end of the 2005-2006 academic year. See Declaration of Kai-Fu Lee, ¶ 5 (submitted July 26,  
 6 2005, in opposition to Plaintiff's Request for Temporary Restraining Order) ("Lee Decl.").

7 The "recruiting season" for the Class of 2006 occurs during that last quarter of 2005. If  
 8 Dr. Lee remains enjoined from recruiting university students on behalf of Google until the time  
 9 of trial, he will be unable to help Google recruit from the Class of 2006 during the recruiting  
 10 season. As set forth in the Evidentiary Hearing Motion, Dr. Lee is a highly respected and  
 11 influential person in China, particularly among Chinese students. If Dr. Lee is not permitted to  
 12 recruit from the Class of 2006 for Google, Google's efforts to staff its Chinese R&D center, and  
 13 the overall progress of that R&D center itself, will be affected not just for the four months  
 14 between the preliminary injunction hearing and trial, but for the entire next year, and beyond.

15 Microsoft asserted at the TRO stage that Dr. Lee knows Microsoft's "business strategies  
 16 with respect to China" and therefore should be barred from doing any work for Google in China.  
 17 Microsoft's Motion [for TRO] at 4:7-8; Order at 2:20-21. Google submits, and intends to prove  
 18 at an evidentiary hearing, that what Microsoft was really worried about has nothing to do with  
 19 potential misuse of trade secrets or legitimate "protectable" interests of a former employer.  
 20 Instead, what Microsoft was concerned about was that, because of Dr. Lee's powerful reputation  
 21 among the Chinese students, many of the students both companies seek to recruit would go to  
 22 Google, not Microsoft. That fear – while perhaps justified – has nothing to do with Dr. Lee's  
 23 supposed knowledge of Microsoft's purported "China Strategy" or trade secrets, and everything  
 24 to do with Dr. Lee's unique personal qualities and reputation. An evidentiary hearing would  
 25 assist the Court in assessing the actual reasons and motives behind Microsoft's efforts to bar Dr.

1 Lee from on-campus recruiting, and therefore in deciding whether they are or are not sufficient  
2 under the governing law.

3 Any preliminary injunction issued by this Court in September will have a significant  
4 effect on Google's Chinese R&D center well beyond the January trial date (in addition to the  
5 significant effect it will have on Dr. Kai-Fu Lee, as set forth in his papers). It will also have a  
6 significant effect on any other Microsoft employee who is thinking of joining Google, or, indeed,  
7 any other company. In light of the importance of the decision, Google respectfully joins Dr.  
8 Lee's request that the Court hold an evidentiary hearing on the Preliminary Injunction motion.

9 DATED this 21<sup>st</sup> day of August, 2005.

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**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the State of Washington, that I caused to be served, via hand delivery, the following:

GOOGLE INC.'S JOINDER OF LEE'S MOTION FOR EVIDENTIARY HEARING

Said pleading was served upon:

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DATED at Seattle, Washington, this 22<sup>nd</sup> day of August, 2005.

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